

# Regular Meeting

<b>Agenda Item #</b>	5
<b>Meeting Date</b>	July 26, 2004
<b>Prepared By</b>	Susan Silber, City Attorney
<b>Approved By</b>	Suzanne Ludlow Community & Gov't. Liaison

<b>Discussion Item</b>	Amendment of Agreement with former City Manager Richard Finn
<b>Background</b>	The City is a party to a binding agreement (dated September 8, 2003) with the former City Manager. Both parties wish to amend the nonfinancial provisions of the Agreement.
<b>Policy</b>	The City Charter empowers the Council to employ and set the terms of employment for a City Manager. This authority includes terms of severance and transition. The new City Manager will have the authority to assign work to the former City Manager and formulate recommendations to the Council regarding the length of the former City Manager's active tenure.
<b>Fiscal Impact</b>	None
<b>Attachments</b>	Amendment to Agreement and General Release
<b>Recommendation</b>	Authorize execution of the Amendment to Agreement and General Release.
<b>Special Consideration</b>	

Introduced By:

Resolution Date:

**RESOLUTION NO. 2004-**

**Approving an Amendment to Agreement and General Release  
between the City of Takoma Park and Richard M. Finn and  
Authorizing the Mayor to Execute the Amendment**

**WHEREAS**, there is a mutual agreement to amend the Agreement and General Release of September 8, 2003 between the City of Takoma Park and Richard M. Finn; and

**WHEREAS**, pursuant to this Amendment, the future duties of former City Manager Richard M. Finn will be assigned by the City Manager in her discretion; and

**WHEREAS**, the City Manager, in her discretion, also will make a determination when Mr. Finn's active employment with the City shall end; and

**WHEREAS**, the parties have mutually agreed to amend the September 8, 2003 Agreement and General Release to eliminate possible exposure of the City of Takoma Park for any breach of contract obligations to Finn, due to a recent change in the Maryland law on confidentiality issues related to employment contracts.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, THAT** the Council of the City of Takoma Park, Maryland, hereby approves the Amendment to Agreement and General Release between the City of Takoma Park and Richard M. Finn, and authorizes the Mayor to execute such Amendment to the Agreement and General Release on behalf of the City of Takoma Park, Maryland.

**THIS RESOLUTION IS ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004.**

U:\Agenda Items\07-26-04\res.finn.wpd

**AMENDMENT TO AGREEMENT AND GENERAL RELEASE**

THIS AMENDMENT TO AGREEMENT AND GENERAL RELEASE (hereinafter "Amendment") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between Richard M. Finn (hereinafter "Finn") and the City of Takoma Park, Maryland(hereinafter "City").

WITNESSETH:

WHEREAS, the parties entered into an Agreement and General Release (hereinafter "Agreement") on September 8, 2003; and

WHEREAS, the parties mutually desire to amend certain of the nonfinancial provisions of the Agreement; and

WHEREAS, Finn and the City fully understand the terms, conditions, and provisions of this Amendment to the Agreement and believe those terms to be fair and reasonable; and

WHEREAS, the parties incorporate the terms of the previous Agreement herein, except as specifically modified by this Amendment.

NOW, THEREFORE, in consideration of the mutual promises and understandings herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Section 2(a), (b), and (e) of the Agreement, are consolidated and amended to read as follows:

(a) Finn will perform those official duties or functions on behalf of the City that are assigned to him by the City Manager in her discretion.

Subparagraph (b) of the Agreement is deleted and replaced with the following:

(b) The City Manager, in her discretion, also will make

a determination when the transition has been completed and the former City Manager's services are no longer required, which may be prior to the period for which Finn will be compensated, *i.e.* January 15, 2005. The City Manager will report her recommendation to the Council for a final personnel decision. In any event, the severance compensation set forth in the September 2003 Agreement is not modified herein.

Subparagraph 2(d) remains unchanged, and is re-lettered (c).

2. Section 4 of the Agreement, providing mutual releases, are ratified in this Amendment so that all claims arising from conduct preceding the date of execution of this Amendment, whether known or unknown, are hereby released by both parties.

3. Section 5 of the Agreement is deleted and replaced by the following:

The City and Finn acknowledge that the Employment Contract, the Agreement and General Release, and this Amendment are public documents except for provisions concerning performance evaluations and references, which, as personnel matters, are confidential pursuant to Maryland law. Both parties agree not to disparage the other's performance in public.

4. Section 6 of the Agreement is amended by deleting the first sentence in its entirety.

5. This Amendment amends Finn's initial Employment Contract (dated January 11, 1999) and the Agreement and General Release (dated September 8, 2003), and these documents shall constitute the entire agreement between the parties, and resolve all matters arising out of Finn's employment with the City.

6. Finn acknowledges that he has read this Amendment,, that he understands his right to review this Amendment with an attorney of his choosing and that he has executed this Amendment voluntarily and with full knowledge of its meaning and consequences.

CITY OF TAKOMA PARK, MARYLAND

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kathryn H. Porter, Mayor (on behalf of the Council)  
City of Takoma Park

Approved for form and legal sufficiency:

\_\_\_\_\_  
Susan Silber, City Attorney  
City of Takoma Park

IT IS UNDERSTOOD AND AGREED THAT THIS IS A FULL AND FINAL RELEASE AND THAT THE CONSIDERATION DESCRIBED IN THIS AMENDMENT TO AGREEMENT AND GENERAL RELEASE IS NOT AN ADMISSION OF LIABILITY.

PLEASE READ CAREFULLY. THIS AMENDMENT TO AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

I HAVE READ THIS AMENDMENT TO AGREEMENT AND GENERAL RELEASE, UNDERSTAND ITS TERMS AND ENTER INTO IT VOLUNTARILY.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Richard M. Finn